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MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS AND DIGNITY OF ALL MIGRANT WORKERS

Written statement submitted by Human Rights Watch, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[26 March 1996]

1. Migrant workers around the world are particularly vulnerable to human rights abuse - and commonly denied access to legal remedy for such abuses. Denied equal protection under the law, migrants, particularly those who work as menial labour in the agricultural, domestic service and construction sectors, are often the victims of fraud and corruption by private recruiters and/or government agencies in the sending country. The amount migrants pay to labour recruiters frequently becomes a debt payable in the receiving country; that debt in turn often becomes the basis for an internationally proscribed, but pervasive, form of bondage used to bind workers to their employers until the debt is paid off. The terms of repayment are rarely specified and often include exorbitant, arbitrary rates of interest. Some migrants have formal work contracts before they leave their countries, but even they often fall victim to contract substitution once they arrive in the country of destination, held to the terms of a document they may never have seen. Whether legal or illegal, migrants can face physical abuse and withholding of wages on the part of their employers, as well as extortion and discrimination by officials in the receiving country. They rarely have the capacity to

complain: illegal migrants are always under the threat of deportation if their presence is discovered by officials, and legal migrants face the prospect of losing their jobs and source of income if their employer seeks retribution. Many migrants in any case have no knowledge of their rights or the process for registering a grievance.

2. Abuses against unskilled migrant workers take place wherever migrants are found. United States security forces abuse migrants on the Mexican border; Thailand's border patrol forces mistreat illegal migrants from Myanmar; debt bondage is experienced by Mexican workers picking strawberries in the United States as well as by Indonesian workers in Malaysia. The involvement of immigration officials and others in extortion can take place in New York as well as Kuala Lumpur. Abuses against migrants are fuelled by the perception in receiving countries that migrants are responsible for a wide range of social ills, even when the contribution of migrants to the local or national economy is recognized.

3. Human Rights Watch has examined the problems of the more than one million Indonesian migrant workers in Malaysia, Asia's largest employer of migrant labour, where foreign workers constitute an estimated 18 per cent of the total work force. The rights violations they encounter are illustrated by the following examples:

Deaths resulting from unsafe departures

4. Some 5,000 prospective migrants from Indonesia, most of them departing from their own country illegally, drowned in the Straits of Malacca between 1990 and 1995 as a consequence of being packed by labour recruiters into overcrowded, unsafe boats that left Indonesian waters with the full knowledge and sometimes direct involvement of local Indonesian police.

Illegal confinement

5. Illegal detention can take place at four stages of the migration process: in Indonesia, by the recruiting agents, while they wait for the go-ahead from Malaysia to send the workers; in Malaysia, by the Malaysian agent, while they wait for the go-ahead from the employer; at the place of employment; and in official deportation centres on the Indonesian side. In August 1995, for example, 120 men and women from Jember, East Java, were discovered being held against their will by labour recruiters in a house on Bintan island on the Indonesian side of the Straits of Malacca, waiting for their tekong, or agent to take them across to Malaysia. The house was guarded by a policeman to whom the migrants had to pay protection money. They had been there three weeks by the time four of the men refused to pay any more money and managed to escape from the house and report to local authorities.

Forced labour

6. Eti, an Indonesian woman in her mid-30s, left her home in Malang, East Java, in August 1994 and registered with a licensed recruitment agency to work in Sarawak in eastern Malaysia as a maid. Two weeks later, after she paid about US$ 250, a labour recruiting agency sent her by ship to Pontianak in West Kalimantan, together with dozens of other migrants. They were then

taken overland to Kuching, the capital of Sarawak, via the border town of Entikong. In Kuching, she went to work in the home of a Malaysian employment agent. She had been promised a salary of about $90 a month and a two-year work contract, but she received neither. She found herself working from 4.30 a.m. until 9 p.m. without a break or day off. She was forbidden to leave the house, and when her employers went out, they locked both the doors and the telephone. In October 1995, after more than a year of virtual slavery during which she received no wages at all, her employers forgot to lock the telephone when they left the house, and Eti was able to call for help. The Indonesian Consulate finally extracted 10 months' wages in back pay for Eti but at half the promised rate, and no charges were ever brought against the employers, even though they could have been charged with wrongful confinement or forced labour under Malaysian law.

7. Sita thought she was going to Malaysia legally. She worked at a plywood factory in East Kalimantan and was walking by the local office of the Manpower Ministry one day in 1994 when she saw an announcement that jobs were available in a plywood factory in Keningau, Sabah, in eastern Malaysia for a salary that was three times what she was then making. She signed up immediately in the ministry office with a representative of a licensed recruiting agency present, and in less than a month had a two-year job contract with the sawmill in Sabah. But she had no work permit and only a three-month visa when her group left by ferry from the Kalimantan port of Nunukan to the Malaysian port of Tawau, and it was not until the ferry entered Malaysian waters that the agency representative told the migrants that their first three months' earning would be cut completely to pay administrative costs of recruitment, and they would be docked 30 per cent of their pay for an unspecified period thereafter to complete the "repayment". This meant that for the duration of the three-month period they were legally in Malaysia, they would get no pay at all, and by the time they did begin receiving partial wages, they would already be illegal immigrants under Malaysian law.

Torture

8. Poniyah binti Winarto, aged 20, was a single woman from Central Java. In early 1994, she had come to Malaysia legally through a private Indonesian agency. She had paid RM 1,000 (US$ 394) to get into Penang from Jakarta and, through a Penang-based Malaysian agency called Pelita Baru Sdn Bhd, was placed with a family in Petaling Jaya, a suburb of Kuala Lumpur. For the next 10 months, she worked 18-hour days without pay, although her salary was supposed to have been RM 300 (US$ 18) a month. Her employers, Mr. and Mrs. Liu, kept her passport, and she was not allowed to leave the house. She could have an hour off each day but never had a day off. She was not allowed to send any letters out of the house and could not contact the agency or members of her family. In November 1994, she decided to run away and met an Indian man who promised to help her in exchange for RM 300, but did not do so. Her employer subsequently accused Poniyah of stealing. Her employers took pliers and pinched her midriff and her nipples with the pliers and began pulling out her hair. The use of pliers and the systematic depilation continued until 9 February 1995 when, with the help of another maid working at the house, she managed to escape and report to the local police station. The police took down her report, then got her to University Hospital in Kuala Lumpur and called a women's organization to help her. By that time she was

almost bald, and there were scars of the pliers all over her body. Her nipples had been pinched until they bled. Poniyah was able to get her passport back, but no charges were ever brought against the Lius.

Pregnancy-based discrimination

9. Singapore, Taiwan and Malaysia are three of many governments that discriminate against women migrants on the basis of pregnancy. The first two require migrant women to have pregnancy tests every six months, and positive results are grounds for deportation.

Abuses in immigration detention centres

10. On 27 July 1995, a non-governmental organization (NGO) called Tenaganita in Kuala Lumpur issued a press release, based on interviews with 250 former detainees, alleging widespread abuse in immigration detention centres in Malaysia and specifically charging that over 40 migrants, men and women, had died since 1994 in one such centre at Semenyih, a small town not far from Kuala Lumpur. Of those who died, 28 were Bangladeshi and, according to Tenaganita, they had died of diseases that should have been possible for prison officials to treat, including beri-beri. The press release also cited inadequate food, overcrowding and extortion in addition to poor medical care as common problems in Semenyih, and similar problems were reported in interviews with Indonesian deportees who had been detained at the Kemayan immigration camp in Pahang State. The Malaysian Government's reaction to the Tenaganita report on immigration abuses was to haul Tenaganita's director, Irene Fernandez, in to the police station for interrogation in relation to possible criminal defamation charges. The Home Ministry said she should have made the allegations known to those involved first before going public. The interrogation was less a precursor to formal charges than a form of intimidation and harassment designed to punish the NGO for bringing allegations of abuse to international attention. In Indonesia, likewise, reports of abuse of Indonesian migrants in the press have led to harassment of journalists, and migrants in Malaysia are warned by the Indonesian Embassy and its consulates not to make their problems public for fear of jeopardizing relations between the two countries.

11. It is clear that no easy solutions to abuses against migrant workers exist. But governments must take steps to address this issue.

12. Human Rights Watch urges the Commission on Human Rights to call on governments of both sending and receiving countries to take the following steps: ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; ensure that worker protection under domestic labour law applies to all categories of employment in which migrant workers are found, especially domestic service; ensure that consular officials are fully knowledgeable about the rights and difficulties of migrant workers and have procedures in place to help their own nationals, legal or illegal, in need; and adopt a policy to protect illegal workers who wish to bring criminal charges against abusive employers.